

RECEIVED
IN ALEXANDRIA, LA.

MAY 14 2013

TONY R. MOORE, CLERK
DEPUTY

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

MONROE DIVISION

HELENA CHEMICAL CO.

: DOCKET NO. 3:12-03018

VS.

: JUDGE TRIMBLE

SHANNON GILL D/B/A C&S FARMS

: MAGISTRATE JUDGE HAYES

MEMORANDUM RULING

Before the court are three motions: (1) “Motion for Default Judgment” filed by plaintiff, Helena Chemical Co. (“Helena”) (R. #7), (2) “Motion for Extension of Time to Plead” filed by defendant Shannon Gill, DBA C & S Farms (“Gill”)(R. #9), and (3) “Motion to Set Aside Entry of Default” filed by Gill (R. #11).

The instant lawsuit was filed to recover from defendant Gill the sum of \$251,839.93 which includes principal and finance charges as of November 25, 2012 and the sum of \$3,429.93 for additional finance charges due on the 25th of each month thereafter pursuant to a Credit Sales and Services Agreement for the delivery of goods sold and delivered to Gill. Helena attaches to the complaint copies of itemized statements of account, invoices and delivery tickets, as well as their Accounts Receivable Ledger which shows the invoices, payments, credit memos and finance charges of the defendant.¹ Helena maintains that pursuant to paragraph 6 of the Credit Sales and Services Agreement, it is entitled also to the payment of all costs of collection, including reasonable attorney’s fees from the defendant.

¹ R. #1, plaintiff’s exhibits B-1 through B-44; exhibit C..

The lawsuit was filed on December 4, 2012; plaintiff refused to execute a waiver of service of process.² Consequently, Helena served Gill on January 22, 2011. Gill failed to answer or respond to the lawsuit within the requisite period of time. On February 15, 2013 Helena filed a motion for entry of default,³ and on February 20, 2013 a notice of entry of default was entered by the clerk of court.⁴ Helena then filed its motion for a default judgment on March 13, 2013 and the motion was set on the motion calendar for April 10, 2013.

Gill states that she retained an attorney on April 2, 2013. Shortly thereafter, Gill filed a motion for extension of time to plead.⁵ On April 8, 2013, Gill filed a motion to set aside default⁶ and on May 3, 2013, Gill filed an answer which was marked deficient because the only pleading permissible from a party in default is a motion to set aside the default.

Helena opposed the motion for extension of time and motion to set aside default based on Gill's lack of showing this court that she had just cause for failing to timely respond to the lawsuit. Gill argues various alleged meritorious defenses but takes no position as to why she failed to timely respond or file an answer to this lawsuit. The court has carefully considered the arguments of the parties including Gill's alleged defenses and finds that Gill has failed to show just cause for failing to timely respond to this lawsuit.

² R. #14-1.

³ R. #5.

⁴ R. #6.

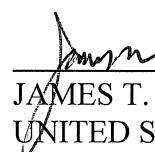
⁵ R. #9.

⁶ R. #11.

CONCLUSION

Based on the foregoing, the court will (1) deny Gill's motion for extension of time to plead, (2) deny Gill's motion to set aside default, and (3) grant Helena's motion for default judgment and enter judgment for the sum of \$251,839.93 which includes principal and finance charges as of November 25, 2012 and the sum of \$3,429.93 on the 25th day of each month thereafter as finance charges, until paid. The court will also grant Helena \$5,000 in attorney fees and all costs including the \$272.50 service of process fee.

THUS DONE AND SIGNED in Chambers at Lake Charles, Louisiana, this 14th day of May, 2013.



JAMES T. TRIMBLE, JR.
UNITED STATES DISTRICT JUDGE